

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

343 WEST SUNSET, LLC

*Plaintiff,*

v.

SENECA INSURANCE COMPANY,  
INC.

*Defendant*

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CIVIL ACTION NO. 5:19-cv-1375

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DEFENDANT SENECA INSURANCE COMPANY'S NOTICE OF REMOVAL

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TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Pursuant to 28 U.S.C. §§1441 and 1446, Defendant Seneca Insurance Company, Inc. ("Defendant") files this Notice of Removal on the basis of diversity of citizenship and jurisdictional amount, and respectfully shows the Court the following:

**FACTUAL AND PROCEDURAL BACKGROUND**

1. This is an insurance claim based on alleged property damage to a commercial property located at 3300 Nacogdoches Road, San Antonio, Texas 78217 ("Property").

2. On September 11, 2019, Plaintiff 343 West Sunset, LLC ("Plaintiff") filed its Original Petition in the matter styled *343 West Sunset, LLC v. Seneca Insurance Company*; Cause No. 2019CI19111; In the 150th Judicial District Court, Bexar County, Texas ("State Action"), in which Plaintiff asserts claims for negligence, violations of the Texas Insurance Code, and bad faith.

Defendant was notified of the suit on October 24, 2019 and appeared in the State Action on November 22, 2019.

#### **BASIS FOR REMOVAL**

##### **A. There is Complete Diversity**

3. Removal is proper based upon diversity of citizenship under 28 U.S.C. §§ 1332(a), 1441(a) and 1446.

4. Upon information and belief, Plaintiff is a limited liability company organized and existing under the laws of Texas, with its principal place of business in Bexar County, Texas. (Pl.'s Orig. Pet. at para. 2).

5. Both at the time the lawsuit was originally filed, and at the time of removal, Defendant Seneca is a corporation incorporated and existing under the laws of New York, keeping its principal place of business in New York, New York.

6. Attached hereto as Exhibit "A" is the Index of Matter Being Filed. A copy of the Bexar County Clerk's Docket Sheet and file for this case is attached as Exhibit "B", which includes true and correct copies of executed process, pleadings, and orders. Attached hereto as Exhibit "C" is Defendant's Designation of Counsel.

##### **B. The Amount in Controversy Exceeds \$75,000.00**

7. This is a civil action in which the amount in controversy exceeds the jurisdictional limits of \$75,000.00. In determining the amount in controversy, the Court may consider, "penalties, statutory damages, and punitive damages." *St Paul Reinsurance Co, Ltd v Greenberg*, 134 F.3d 1250, 1253 (5th Cir. 1998); *see Ray v State Farm Lloyds*, 1999 WL 151667, at \*2 - 3 (N.D. Tex. 1999) (finding sufficient amount in controversy in plaintiff's case against the insurer for breach of contract, bad faith, violations of the Texas Insurance Code and Texas Deceptive

Trade Practices Act and mental anguish). Plaintiff alleges that Defendant is liable under violations of §542 of the Texas Insurance Code and seeks to recover actual damages, consequential damages, prejudgment interest, additional statutory damages, post-judgment interest, and reasonable and necessary attorneys' fees. Plaintiff's Original Petition also indicates that Plaintiff seeks monetary relief of over \$100,000. (Pl.'s Orig. Pet. at para. 1). Thus, the amount in controversy clearly exceeds \$75,000.

8. Accordingly, by virtue of diversity of citizenship the United States district courts have original jurisdiction.

**C. REMOVAL IS PROCEDURALLY CORRECT**

9. Defendant was notified of the suit on **October 24, 2019**. Defendant files this Notice of Removal within the thirty-day time period required by 28 U.S.C. § 1446(b).

10. Venue is proper in this district and division under 28 U.S.C. § 1446(a) because this district and division include county in which the State Action has been pending, and because a substantial part of the events giving rise to the Plaintiff's claims allegedly occurred in this district and division.

11. Pursuant to 28 U.S.C. § 1446(a), all pleadings, process, orders, and all other filings in the State Action are attached to this Notice.

12. Pursuant to 28 U.S.C. § 1446(d), promptly after Defendant files this Notice, written notice of the filing will be given to the Plaintiff, the adverse party.

13. Pursuant to 28 U.S.C. § 1446(d), a true and correct copy of this Notice of Removal will be filed with the Clerk of Bexar County, promptly after Defendant files this Notice.

**CONCLUSION**

14. Based upon the foregoing and the other documents filed contemporaneously with this Notice, all fully incorporated herein by reference, Defendant Seneca Insurance Company, Inc. hereby removes this case to this Court for trial and determination.

Respectfully submitted,

**THOMPSON, COE, COUSINS & IRONS, L.L.P.**

By: /s/ James N. Isbell

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**COUNSEL FOR DEFENDANT**

**SENECA INSURANCE COMPANY, INC.**

**CERTIFICATE OF SERVICE**

I hereby certify that on November 22, 2019, a true and correct copy of the foregoing document was served upon all known counsel by electronic mail and/or facsimile in accordance with the TEXAS RULES OF CIVIL PROCEDURE:

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